

most licensees of MDS facilities also operate MDS facilities.¹³⁸ It suggests that we conform the MDS/MMDS EEO reporting requirements¹³⁹ to the requirements of the 1992 Cable Act so that such licensees will be required to file only one report. Alternatively, WCA suggests that we revise our rules to state that those licensees of MDS facilities¹⁴⁰ who are not involved in the direct selling of multiple channels of video programming to the public should file an EEO report only pursuant to Section 21.307 of our rules.

42. Bell Atlantic Telephone Companies ("Bell Atlantic") and GTE Service Corporation ("GTE") request that we clarify that video dialtone carriers are not multichannel video programming distributors and, therefore, are not subject to our cable EEO requirements.¹⁴¹ Both telephone companies argue that local exchange carriers (LEC) offering video dialtone service will provide only a common carrier platform to video programmers and, as such, will not be involved in the selling of video programming directly to the public. These companies argue that we should follow our decision in the Broadcast Signal Carriage NPRM in which we stated that a video dialtone carrier, which does not sell programming or interact directly with the public, would not be subject to our retransmission consent provisions.¹⁴²

43. Congresswoman Cardiss Collins, NCTA and UCC argue that video dialtone should be subject to the cable EEO provisions. Congresswoman Collins states that she intended that the EEO provisions should be imposed on any multichannel video programming distributor, including a video dialtone carrier. She reminds the Commission that Congress intended that the EEO provisions should be imposed on any new, emerging and alternative

¹³⁸ See WCA Comments, at 1-2.

¹³⁹ See 47 C.F.R. §21.307.

¹⁴⁰ "MDS" is used herein to refer collectively to the single channel (MDS) and multichannel (MMDS) authorizations. See Report and Order in PR Docket 92-80, 8 FCC Rcd 1444, n.1 (1993).

¹⁴¹ See Bell Atlantic Comments, at 1-2; GTE Comments, at 1-3.

¹⁴² See e.g., Bell Atlantic Comments, at 2; GTE Comments, at 2. See also Report and Order, MM Docket No. 92-259, 8 FCC Rcd 2965, 2998 (1993). We did hold, however, that the customer-programmers of a video dialtone provider would be subject to the retransmission consent provisions.

technology.¹⁴³ NCTA argues that video dialtone providers engage in video distribution; that they allow customer-programmers to distribute their services to subscribers; and that video dialtone service and their customer-programmers fall within the openly worded statutory definition. Moreover, NCTA argues that, by extending the reach of the EEO provisions to all multichannel video programming distributors, Congress decided to apply the EEO provisions to all multichannel distributors equally. Recognizing that the Act does not explicitly identify telephone companies offering video dialtone service, NCTA asserts that Congress did direct the Commission to ensure women and minorities equal employment and promotion opportunities in new, emerging and alternative technologies. Finally, NCTA argues that there is no justification for omitting these services.¹⁴⁴

44. UCC argues that we are compelled to exercise EEO jurisdiction over video dialtone providers for three reasons. First, UCC asserts that our common carrier EEO requirements are inadequate. Second, UCC claims that video dialtone carriers share a monopoly status and leased access characteristic with cable operators and other common carriers. Specifically, LECs offering video dialtone service will provide a common carrier platform that will parallel their monopoly local exchange infrastructure. It contends that this monopoly status over the transport service will inhibit the program choices of program suppliers which deliver programming to the public. UCC argues that it is this exclusive transport function which necessitates EEO oversight. Finally, UCC argues that LECs offering video dialtone have been given substantial programming privileges by

¹⁴³ See Letter from Congresswoman Cardiss Collins dated April 15, 1993, to Chairman James H. Quello.

¹⁴⁴ See NCTA Comments, 7-9. In its reply, NCTA argues that telephone companies that provide video dialtone service are cable operators because they are responsible, through any arrangement, for the management and operation of cable service. NCTA Reply Comments, at 4-5. We have previously held that telephone companies who offer video dialtone are not cable operators and that video dialtone service is not a cable service. See Telephone Company-Cable Television Cross-Ownership Rules, Section 63.54 - 63.58, 7 FCC Rcd 300 (1992); aff'd on reconsideration, see also, 7 FCC Rcd 5069 (1992). Moreover, in adopting the Video Dialtone Decision, Second Report and Order, in CC Docket No. 87-566, 7 FCC Rcd 5781, 5789 (1992), we held that video dialtone carriers would not be permitted to select, or maintain a cognizable financial interest in, video programming, which would be tantamount to acting as a traditional cable operator.

our Video Dialtone decision.¹⁴⁵ UCC argues that our Video Dialtone decision specifically allows LECs offering video dialtone to provide programming such as interactive shopping, video multimedia graphics, news and stock market videotext, video games, computer software, and on-line airline guides. UCC argues that these programming privileges, along with the rules permitting expanded relationships with video programmers (e.g., beyond the carrier-user exemption and permissible non-cognizable ownership relationships), will afford LECs offering video dialtone a significant amount of influence over programming.

45. Congress' ultimate goal in enacting the EEO provisions of both the 1984 and 1992 Cable Acts was to advance the Nation's policy favoring program diversity.¹⁴⁶ As Congress states in the legislative history to the 1992 Cable Act, "...increased equal employment opportunities (EEO) for women and minorities, particularly in decision-making and managerial positions,...is a crucial means of assuring that program service will be responsive to a public consisting of a diverse array of population groups."¹⁴⁷ By imposing the EEO provisions on cable operators, Congress apparently determined that these entities, which exercise selection control over video programming provided directly to the consumer, have the greatest and most direct effect on the programming choices offered to the American public. Similarly, it is reasonable to conclude that, by expanding the scope of these provisions to include any multichannel video programming distributor, Congress intended to impose the EEO provisions only on "new, emerging and alternative technologies" that also exercise control over the programming which these technologies offer directly to the public. Accordingly, we will amend our rules to require compliance with our cable EEO provisions by those entities which have control over more than one channel of video programming provided directly to the public. An entity is deemed to have control over the video programming it distributes if it selects video programming channels or programs and determines how they are presented for sale to consumers. We believe that it is the employment practices of these entities which will have the greatest and most direct effect on the diversity of program choices offered to the American public. We

¹⁴⁵ In its Reply, UCC argues that it is these privileges that make LECs offering video dialtone service multichannel video programming distributors, even under the analysis adopted in the Broadcast Signal Carriage rulemaking proceeding. See Broadcast Signal Carriage: R&Q, at 2998.

¹⁴⁶ See Section 22(a) of the Cable Act of 1992; House Committee on Energy and Commerce H.R. Rep. No. 934, 98th Cong., 2d Sess. (1984) at 85. (Hereinafter "1984 House Report").

¹⁴⁷ House Report, at 111. See also 1984 House Report, at 85.

clarify below the entities that are subject to these rules.

46. A LEC offering video dialtone service currently does not provide video programming directly to the public or have the ability to exercise control over the selection of video programming provided directly to the consumer.¹⁴⁸ Consequently, LECs are not under these circumstances subject to our cable EEO provisions. Rather, the entity that exercises control over video programming -- the program service provider using the video dialtone transport facility -- will under our new rules be subject to our EEO rules and policies. Similarly, a licensee or lessee of an MDS facility which does not exercise control over the video programming distributed (e.g., those operating as common carriers) would not be subject to these cable EEO rules. Rather, our EEO requirements would apply to the "wireless cable" provider, whether using owned or leased MDS (and/or ITFS) facilities to distribute video programming.¹⁴⁹ Likewise, the licensee of a DBS facility that does not exercise control over the video programming it distributes would not be subject to our EEO rules. Rather, our EEO requirements would apply to the "provider" of the DBS service¹⁵⁰ whether using owned or leased

¹⁴⁸ The Commission has specifically ruled that the expanded affiliation privileges granted to LECs offering video dialtone do not allow telephone companies to exercise influence or control over video programming. See Video Dialtone Decision, at 5789, 5817, 5818 n. 180, 5819. Indeed, LECs are explicitly prohibited from providing video programming directly to subscribers under the Communications Act. See 47 U.S.C. §533(b).

¹⁴⁹ Typically, "wireless cable" providers use some combination of 13 MDS channels available to them on a full-time basis and 20 channels from the Instructional Television Fixed Service available to them on a leased, part-time basis, to transmit video entertainment programming to subscribers. See e.g., Report and Order in PR Docket No. 92-80, at 1444, n. 8. Accordingly, although not raised in the comments to the Notice, we believe that it is appropriate to include qualifying users of ITFS facilities within the scope of the definition for "multichannel video programming distributor."

¹⁵⁰ The definition of a "provider" of DBS service may be clarified or more closely defined in the future as it is implicated in other regulatory contexts. See e.g., Notice of Proposed Rule Making, in MM Docket No. 93-25 (released March 2, 1993) (Direct Broadcast Satellite Public Service Obligations).

satellite facilities to distribute video programming.¹⁵¹ If both the licensee and the customer-programmer exercise control, both would be subject to the EEO rules.

47. In each of the above-listed scenarios, the cable EEO provisions apply to those program packagers who distribute two or more channels of video programming directly to the public. We do not believe, however, that Congress intended to impose the cable EEO requirements on entities that principally own and originate programming, even though a small portion of their business may be devoted to distributing commonly-owned programming in packages to subscribers. We will, therefore, adopt a limited exception to the cable EEO rules to accommodate such programmers. Specifically, a programming service offering six or fewer channels of commonly-owned video programming over a leased transport facility will not be subject to the cable EEO requirements. However, a programmer offering more than six channels of commonly-owned video programming must comply with the cable EEO requirements.¹⁵²

6. Effective Date of New Provisions.

48. TCI notes that the reporting year for many cable systems may be as much as six months underway when our final rules are adopted. It, therefore, requests that we permit operators to

¹⁵¹ As with cable entities, the EEO provisions will apply to program service providers/entities as employment units. See 47 C.F.R. §76.71(b). A headquarters office will be treated as a separate employment unit to the extent the work of that office is primarily related to the operation of more than one employment unit. See 47 C.F.R. §76.71(c). Each entity should file an Annual Employment Report (Form 395-A) for each employment unit with six or more full-time employees. As is the current practice with cable entities, we will not require an annual submission from program service provider/entities with less than six full-time employees. However, we will require such entities to initially identify that they have less than six full-time employees and are not subject to the statistical reporting requirements. Program service provider/entities will be subject to the EEO annual certification review, five year review, and on-site reviews currently imposed on cable entities.

¹⁵² For purposes of this exception, programming services will be considered "commonly-owned" if the same entity holds a majority of the stock (or is a general partner) of each program service.

implement the new reporting requirements beginning with the 1995 reporting year.¹⁵³

49. TCI's argument lacks merit. The information required by the Act and our amended rules is not so significantly different from previous reporting requirements as to justify unnecessary delays in implementation. The 1992 Cable Act merely requires cable operators to provide more specific data than previously required.¹⁵⁴ Accordingly, TCI's suggestion is rejected.¹⁵⁵

¹⁵³ See TCI Comments, at 1-4. For example, the 1994 reporting year, for some companies, began in January 1993 and will end in January 1994.

¹⁵⁴ The six new job categories are actually titles falling within the previously-designated "Officials and Managers" category. To report the number of officials and managers, a cable operator had to know the number of corporate officers, general managers, chief technicians, comptrollers, general sales managers, and production managers it employed. Moreover, we note that, in its comments, TCI suggested that we allow cable operators to present job title data as already compiled for internal record-keeping purposes such as for payroll.

¹⁵⁵ Entities using MDS, ITFS, DBS, TVRO, and/or video dialtone transport facilities that previously have not been subject to the cable EEO requirements are expected, as of the effective date of these rules, to ascertain the requirements of the cable EEO regulations and to take steps to ensure compliance with all of these provisions, including the reporting requirements. Although the Commission will make an effort to compile a mailing list of the entities newly subject to the cable EEO regulations, it is ultimately the responsibility of each "multichannel video programming distributor" to which the statutory requirement applies to obtain and file the requisite annual reporting forms. Parties seeking to be included on the forms mailing list are requested to provide the Commission (Equal Employment Opportunity Branch, Mass Media Bureau) with a letter indicating the company's name and address and the location(s) of the regulated operation no later than October 1, 1993. We anticipate that entities that are newly subject to the cable EEO rules will file cable annual employment reports (FCC Form 395-A) pursuant to 47 C.F.R. §76.77 beginning with the 1994 Annual Employment Report. However, in order to facilitate the transitional filing period for these entities we will waive the requirement for the submission by these entities of 12-month hiring and promotion data as requested in Section V. B & C and Section VII of the 1994 Annual Employment Report.

C. New Matters Raised By the Comments.

50. NAACP and UCC propose significant changes to every aspect of our EEO enforcement program for the broadcast and cable television industries. Both commenters request that the Commission issue a further notice of proposed rule-making to consider their suggestions.¹⁵⁶ In addition, several commenters from the cable industry request that we use this opportunity to seek a Memorandum of Understanding with the Equal Employment Opportunity Commission and the Department of Labor's Office of Federal Contract Compliance Programs in order to streamline the various federal EEO reporting requirements and filing dates with which cable entities, as employers, must comply.¹⁵⁷ The scope of this rule making proceeding is limited only to the specific EEO provisions of the Cable Act of 1992. The requests from members of the cable industry to seek a Memorandum of Understanding as well as many of the suggestions from NAACP and UCC¹⁵⁸ are unrelated to the specific EEO provisions of the Cable Act of 1992 and are, therefore, beyond the scope of this proceeding.¹⁵⁹ Accordingly, we will not consider these requests herein.

IV. CONCLUSION

51. By this Report and Order, we amend our rules to implement the EEO provisions of the Cable Television Consumer Protection and Competition Act of 1992.

¹⁵⁶ NAACP's pleading is styled as a "Comments and Petition for Further Rule Making." We reject UCC's request that we expand this particular rule making.

¹⁵⁷ See e.g., Continental Comments, at 5; NCTA Comments, at 10-11; TCI Comments, at 4-6; Time Warner Comments, at 13; CTHRA Reply Comments, at 5; Joint Parties Reply Comments, at 5-6. We deny Time Warner's request that we treat its suggestion as a Petition for Further Rule Making.

¹⁵⁸ We have considered the suggestions from NAACP and UCC to the extent that they relate to the specific EEO provisions of the Cable Act of 1992.

¹⁵⁹ The Commission may consider these suggestions at a later time. Section 22(g) of the 1992 Cable Act requires the Commission, within two years of the date of the statute's enactment, to present a report to Congress regarding its EEO enforcement program for both the broadcast and cable industries. See Section 22(g) of the 1992 Cable Act.

V. ADMINISTRATIVE MATTERS

A. Regulatory Flexibility Analysis

52. The Commission's final regulatory flexibility analysis for this Report and Order is set forth in Appendix A.

B. Ordering Clauses

53. Accordingly, **IT IS ORDERED** that pursuant to the authority contained in Section 4(i) and (j), and 303 of the Communications Act of 1934, as amended, and the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, Parts 1, 21, 25, 73, 74, 76 and 100 of the Commission's rules, 47 C.F.R. Parts 1, 21, 25, 73,¹⁶⁰ 74, 76 and 100 are **AMENDED** as set forth in Appendix B.

54. **IT IS FURTHER ORDERED** that the amendment to Parts 1, 21, 25, 73, 74, 76 and 100 of these rules as set forth in Appendix B of this Report and Order will be **EFFECTIVE** thirty (30) days from the date this Report and Order is published within the Federal Register.

55. **IT IS FURTHER ORDERED** that the amendments to the Form 395-A as set forth in Appendix D of this Report and Order will be **EFFECTIVE** ninety (90) days from the date this Report and Order is published within the Federal Register.¹⁶¹

56. **IT IS FURTHER ORDERED** that the Petition for Further Rule Making filed by NAACP on February 17, 1993, **IS DENIED**.

57. **IT IS FURTHER ORDERED** that this rulemaking proceeding, MM Docket No. 92-261, **IS TERMINATED**.

¹⁶⁰ The first group of broadcast television stations which will be subject to the mid-term review will be those stations whose group expiration dates occurred on October 1, 1991. This group includes those broadcast television stations located in the District of Columbia, Maryland, Virginia, and West Virginia.

¹⁶¹ The revised Form 395-A is subject to approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980.

C. Additional Information

58. For further information on this proceeding, contact Lisa M. Higginbotham, Mass Media Bureau, Enforcement Division at (202) 632-7069.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

APPENDIX A

Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action. This action is taken to implement the equal employment opportunity (EEO) provisions of the Cable Television Consumer Protection and Competition Act of 1992.

II. Summary of issues raised by comments in response to the Initial Regulatory Flexibility Analysis. No comments were received in response to the request for comments to the Initial Regulatory Flexibility Analysis. However, comments received in response to the Notice of Proposed Rule Making indicate that smaller cable systems are concerned about the administrative impact of the EEO reporting requirements. One commenter suggested that we eliminate redundant reporting requirements or streamline EEO reporting forms for small cable systems.

III. Significant alternatives considered and rejected. The Act streamlines reporting requirements for small cable entities which employ fewer than six full-time employees. Cable entities, which employ six or more full-time employees, must comply with all of the EEO reporting requirements. Thus, we find no reason to provide a more streamlined reporting form for small cable operators as one commenter suggests. We have, however, revised our Form 395-A to require less information than that proposed in the Notice. We believe that this revised form complies with the 1992 Cable Act, collects sufficient data to ascertain EEO compliance; and imposes a minimum burden on cable operators.

APPENDIX B

Parts 1, 21, 25, 73, 74, 76 and 100 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1 -- PRACTICE AND PROCEDURE

1. The Authority Citation for Part 1 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Paragraph (c) is added to Section 1.815 to read as follows:

§1.815 Reports of annual employment.

* * * * *

(c) Cross References.

(1) Applicability of Cable Television EEO Reporting Requirements to MDS and MMDS facilities, see §21.920 of this Chapter.

(2) Applicability of Cable Television EEO Reporting Requirements for FSS facilities, see §25.601 of this Chapter.

PART 21 -- DOMESTIC PUBLIC FIXED RADIO SERVICES

3. The Authority Citation for Part 21 is revised to read as follows:

AUTHORITY: Secs. 1, 2, 4, 201-205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070-1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

4. Paragraph (g) is added to Section 21.307 to read as follows:

§21.307 Equal employment opportunities.

* * * * *

(g) Cross Reference. Applicability of Cable Television EEO Requirements to MDS and MMDS facilities, see §21.920 of this Part.

5. Section 21.920 is added to Subpart K to read as follows:

§21.920 Applicability of Cable Television EEO Requirements to MDS and MMDS Facilities.

Notwithstanding other EEO provisions within these rules, an entity that uses an owned or leased MDS, MMDS and/or ITFS facility to provide more than one channel of video programming directly to the public must comply with the equal employment opportunity requirements set forth in Part 76, Subpart E of this Chapter, if such entity exercises control (as defined in Part 76, Subpart E of this Chapter) over the video programming it distributes.

PART 25 -- SATELLITE COMMUNICATIONS

Subpart I - Equal Employment Opportunities

25.601 Equal employment opportunity requirement.

6. The Authority Citation for Part 25 is revised to read as follows:

AUTHORITY: §§25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101-104, 76 Stat. 419-427; 47 U.S.C. 701-744; 47 U.S.C. 554.

7. Part 25 is amended by adding Subpart I and Section 25.601 to read as follows:

SUBPART I - EQUAL EMPLOYMENT OPPORTUNITIES

§ 25.601 Equal employment opportunity requirement.

Notwithstanding other EEO provisions within these rules, an entity that uses an owned or leased fixed satellite service facility (operating under this Part) to provide more than one channel of video programming directly to the public must comply with the equal employment opportunity requirements set forth in Part 76, Subpart E of this Chapter, if such entity exercises control (as defined in Part 76, Subpart E of this Chapter) over the video programming it distributes.

PART 73 -- RADIO BROADCAST SERVICES

5. The Authority Citation for Part 73 is revised to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334.

6. Paragraph (d) is added to Section 73.2080 to read as follows:

§73.2080 Equal employment opportunities.

* * * * *

(d) Mid-term Review for Television Broadcast Stations. The Commission will conduct a mid-term review of the employment practices of each broadcast television station at two and one half years following the station's most recent license expiration date as specified in Section 73.1020 of these rules. The Commission will use the employment profile information provided on the first two Form 395-B reports submitted following such license expiration date to determine whether television station's employment profiles as compared to the applicable labor force data, are in compliance with the Commission's processing criteria. Television broadcast stations which employment profiles fall below the processing criteria will receive a letter noting any necessary improvements identified as a result of the review.

PART 74 -- EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

7. The Authority Citation for Part 74 is revised to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, 554.

8. Section 74.996 is added to Subpart I to read as follows:

§74.996 Applicability of Cable EEO Requirements to ITFS Facilities.

Notwithstanding other EEO provisions within these rules, an entity that uses an owned or leased MDS, MMDS and/or ITFS facility to provide more than one channel of video programming directly to the public must comply with the equal employment opportunity requirements set forth in Part 76, Subpart E of this Chapter, if such entity exercises control (as defined in Part 76, Subpart E of this Chapter) over the video programming it distributes. With respect to the use of an ITFS facility, the EEO provisions set forth in Part 76, Subpart E do not apply to an accredited institution or government organization engaged in the formal education of enrolled students or to a nonprofit organization whose purposes are educational and include providing educational and instructional television material to such accredited institutions and governmental organizations.

PART 76 -- CABLE TELEVISION SERVICE

9. The Authority Citation for Part 76 is revised to read as follows:

AUTHORITY: Sec. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309; 532; 533; 535; 542; 543; 552; 554, as amended, 106 Stat. 1460.

10. Paragraph (a) of Section 76.71 is revised to read as follows:

§76.71 Scope of application.

(a) The provisions of this subpart shall apply to any corporation, partnership, association, joint-stock company, or trust engaged primarily in the management or operation of any cable system. Cable entities subject to these provisions include those systems defined in §76.5(a) of the rules, all satellite master antenna television systems serving 50 or more subscribers, and any multichannel video programming distributor. For purposes of the provisions of this subpart, a multichannel video programming distributor is an entity such as, but not limited to, a cable operator, a multipoint distribution service, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, or a video dialtone program service provider, who makes available for purchase, by subscribers or customers, multiple channels of video programming, whether or not a licensee. Multichannel video programming distributors do not include any entity which lacks control over the video programming distributed. For purposes of this subpart, an entity has control over the video programming it distributes, if it selects video programming channels or programs and determines how they are presented for sale to consumers. Notwithstanding the foregoing, these rules are not applicable to the owners or originators (of programs or channels of programming) that distribute six or fewer channels of commonly-owned video programming over a leased transport facility. For purposes of this subpart, programming services are "commonly-owned" if the same entity holds a majority of the stock (or is a general partner) of each program service.

* * * * *

11. Paragraph (d) is added to Section 76.77 to read as follows:

§76.77 Reporting Requirements.

* * * * *

(d) Job Category Definitions. The following job category definitions are to be used when classifying employees for purposes of this section:

(1) Corporate Officers. An employee who is responsible for setting broad policies for the overall operation of the company and who holds a corporate office as designated by the company's governing regulations (e.g., Articles of Incorporation, Articles of Partnership, By-Laws). Examples of positions which may fall within this category include, Chairman of the Board, President and Vice President.

NOTE: Employees who perform responsibilities falling within the "Corporate Officers" and another of the job categories (2) through (6), should normally be classified in only one of the categories (2) through (6). Specific job titles for categories (1) through (6) are merely illustrative. The proper categorization of any employee depends on the kind and level of the employee's responsibilities and not merely the employee's title. Employees who are appropriately classified into one of the categories (1) through (6) also should fall within category (7).

(2) General Manager. An employee who exercises overall responsibility for a cable unit or system. Related title may include "systems manager."

(3) Chief Technician. An employee who has overall responsibility for the system's technical operations. The incumbent ordinarily oversees technical budgets and expenditures, inventory control and fleet management. Individual ordinarily supervises technical personnel in the installation, service, maintenance and construction departments and/or studio. Category includes related titles such as "Technical Operations Manager," "Technical Manager," "Plant Manager," or "Chief Engineer."

(4) Comptroller. An employee who manages the activities of the accounting department in the maintenance of the accounting book and other such records.

(5) General Sales Manager. A senior sales or marketing employee who oversees the marketing functions of the system which may include telemarketing in addition to direct sales.

(6) Production Manager. A senior employee responsible for advertising and/or production of local community programming.

NOTE: An employee whose responsibilities fall within more than one of the job categories (2) through (6), (i.e., General Manager/Comptroller), should be listed in the one job category

which represents the most frequently performed task by that person.

(7) Managers. Occupations requiring administrative personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases or segments of a firm's operation or subdepartments of a major department. Incumbents within this category ordinarily exercise authority to hire and terminate employees. This category would include systems managers and assistant managers, program directors and assistant directors, office managers, budget officers, promotions managers, public affairs directors, chief engineers and those holding equivalent positions. Employees appropriately falling within categories (1) through (6) also should fall within this category.

(8) Professionals. Occupations requiring either college graduation or experience of such kind and amount as to provide a comparable background. Includes: accountants and auditors, editors, engineers, lawyers and labor relations specialists. This category would include persons engaged in the writing, preparation and reproduction of programming, writers or editors, producers and directors of programs, floor directors, announcers, singers, actors, music librarians and those in similar positions.

(9) Technicians. Occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: computer programmers and operators, engineering aides, junior engineers and electronic technicians. This category also would include strand mappers, audio and video engineers, camera technicians (live or film), film processors, light technicians, drafters and design personnel, electronic converter repair technicians (technicians who perform more than clear and recycle functions) and advertising sales production personnel.

(10) Sales. Occupations engaging wholly or primarily in direct selling. This category would include advertising agents, cable service sales personnel (sales representatives), and individuals engaged in direct customer contact for the purposes of product and service promotion. This category includes employees who ordinarily are paid by commissions.

(11) Office and Clerical. Includes all clerical-type work regardless of level of difficulty, where the activities are predominantly nonmanual though some manual work not directly involved with altering or transporting the products is included. Includes: bookkeepers, cashiers, collectors of bills and accounts, messengers and clerks, office machine operators, stenographers, typists and secretaries, telephone operators,

kindred workers and customer service representatives.

(12) Craft Workers (skilled). Manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. Exercise considerable independent judgment and usually receive an extensive period of training. Includes: hourly paid supervisors who are not members of management, mechanics, and repair workers, electricians, motion picture projectionists, and splicers.

(13) Operatives (semi-skilled). Workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training. Includes: apprentices, operatives, truck and tractor drivers, welders, installers, line workers, and trenching machine workers.

NOTE: Apprentices -- Persons employed in a program including work training and related instruction to learn a trade or craft which is traditionally considered an apprenticeship regardless of whether the program is registered with a Federal or State agency.

(14) Laborers (unskilled). Workers in manual occupations which generally require no special training. Perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. Includes: gardeners and groundskeepers, laborers performing lifting or digging, stage hands and kindred workers.

(15) Service Workers. Workers in both protective and nonprotective service occupations. Includes: char workers and cleaners, elevator operators, guards and watch workers, janitors, and kindred workers.

NOTE: A person who does a job falling within more than one of the job categories listed (7) through (15) is to be listed in the job category which represents the most frequently performed task by that person; a person is to be listed only once. Specific job titles listed in the categories above are merely illustrative. The proper categorization of any employee depends on the kind and level of the employee's responsibilities.

PART 100 -- DIRECT BROADCAST SATELLITE SERVICE

12. The Authority Citation for Part 100 is revised to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 554.

13. Paragraph (e) is added to Section 100.51 to read as follows:

\$100.51 Equal employment opportunities.

* * * * *

(e) Notwithstanding other EEO provisions within these rules, an entity that uses an owned or leased DBS facility operating under this Part to provide more than one channel of video programming directly to the public must comply with the equal employment opportunity requirements set forth in Part 76, Subpart E of this Chapter, if such entity exercises control (as defined in Part 76, Subpart E of this Chapter) over the video programming it distributes.

APPENDIX C

List of Comments

Comments

1. Bell Atlantic Telephone Companies
2. Cablevision Industries, Inc.; Multimedia Cablevision, Inc.; Multivision Cable TV Corporation; Providence Journal Company; and Sammons Communications, Inc.
3. Century Communications Corporation; TeleCable Corporation; KBLCOM, Inc.; Columbia International, Inc.; Western Communications, Inc.; Greater Media, Inc.; Helicon Corporation; Acton Cable Partnership; Rock Associates; Monmouth Cablevision; Allen's Television Cable Service, Inc.; Frederick Cablevision, Inc.; Gilmer Cable Television Company, Inc.; Halcyon Group, Inc.; Zylstra Communications Corporation; Cable Television Association of Maryland, Delaware and the District of Columbia; Florida Cable Television Association; Texas Cable Television Association; and West Virginia Cable Television. (Represented by Cole, Raywid, and Braverman).
4. Consortium of Small Cable Television Companies
5. Continental Cablevision
6. GTE Service Corporation
7. National Association for the Advancement of Colored People
8. National Association of Broadcasters
9. National Cable Television Association
10. New York State Commission on Cable Television
11. Office of Communications of the United Church of Christ
12. Tele-Communications, Inc.
13. Time Warner Cable TV Corporation
14. Wireless Cable Association

Reply Comments

1. Cable Television Human Resources Association
2. Comcast Corporation; Jones Intercable, Inc.; Newhouse Broadcasting Corporation
3. GTE Service Corporation
4. National Association of Broadcasters
5. National Cable Television Association
6. Office of Communications of the United Church of Christ
7. Tele-Communications, Inc.
8. Time Warner Cable TV Corporation

Post-Reply Comment Filings

1. The Honorable Cardiss Collins, U.S. House of Representatives
2. Equal Employment Opportunity Commission
3. National Cable Television Association

APPENDIX D

INSTRUCTIONS FOR COMPLETING FCC FORM 395-A

YOU ARE STRONGLY ADVISED TO CONSULT THE COMMISSION'S CABLE EEO
RULES BEFORE COMPLETING THIS FORM
47 CFR Section 76.71 et seq.

General Instructions

Supply the requested information for the unit identified by the EEO ID number appearing on the attachment containing FCC provided labor force totals for that unit. If the unit is to submit a Supplemental Investigation Sheet (SIS), one will be attached to the form and an X will appear in the brackets before "Supplemental Investigation Sheet Attached" located in the box "For FCC Use Only" on page 1 of the form. If the unit no longer exists due to consolidation with another unit, or is no longer under your control, attach as Exhibit A an explanation and proceed to Section IX.

Section I

- A. In addition to the unit operator's legal name, supply, if applicable, the name of the MSO owning or controlling the operator.
- B. Supply the address to which you want correspondence sent.
- C. Supply the county and state of the unit's principal employment office.
- D. A full-time employee is one who works 30 or more hours per week.
- E. Insert the payroll period in January, February or March used for this year's report. The payroll period must correspond to the same payroll period used for last year's report unless you obtain permission from the FCC's EEO Branch to use a different payroll period.
- F. Place an X in the appropriate brackets for each possible exhibit.

Section II

Submit as Exhibit A a list of communities added to or deleted from the unit, using the format provided. To obtain this information, review the prior year's form for the unit, noting the communities then comprising the unit, and comparing that list with the names of the communities now comprising the unit.

Section III

Carefully answer each of the nine (9) questions by checking either Yes or No. If the answer is No, attach as Exhibit B an explanation.

Section IV

You may attach at Exhibit C any additional information you believe useful in the FCC's evaluation of your EEO efforts. There is no requirement to provide such information.

Section V

- A. Report all permanent, not temporary, employees, both full-time and part-time, in the appropriate job categories, listed by gender and race, color or national origin.

Job Category Definitions

Managers -- Occupations requiring administrative personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases or segments of a firm's operations or subdepartments of a major department. Incumbents within this category ordinarily exercise authority to hire and terminate employees. This category would include systems managers and assistant managers, program directors and assistant directors, office managers, budget officers, promotion managers, public affairs directors, chief engineers and those holding equivalent positions. Employees whose occupations fall within the Corporate Officers, General Manager, Chief Technician, Comptroller, General Sales Manager, and Production Manager categories also should be listed under this category.

Professionals -- Occupations requiring either college graduation or experience of such kind and amount as to provide a comparable background. Includes: accountants and auditors, editors, engineers, lawyers and labor relations specialists. This category would include persons engaged in the writing, preparation and reproduction of programming; writers and editors, producers and directors of programs, floor directors, announcers, singers, actors, music librarians and those in similar positions.

Technicians -- Occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post high school education, such as offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: computer programmers and operators, engineering aides, junior engineers and electronic technicians. This category would include strand mappers, audio and video engineers, camera technicians (live or

film), film processors, light technicians, drafters and design personnel, electronic converter repair technicians (technicians who perform more than clear and recycle functions) and advertising sales production personnel.

Sales -- Occupations engaging wholly and primarily in direct selling. This category would include advertising agents, cable service sales personnel (sales representatives), and individuals engaged in direct customer contact for the purposes of product and service promotion. This category includes employees who ordinarily are paid by commissions.

Office and Clerical -- Includes all clerical-type work regardless of level of difficulty, where the activities are predominantly nonmanual though some manual work not directly involved with altering or transporting the products is included. Includes: bookkeepers, cashiers, collectors of bills and accounts, messengers and clerks, office machine operators, stenographers, typists and secretaries, telephone operators, kindred workers and customer service representatives.

Craft Workers (skilled) -- Manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. Exercise considerable independent judgment and usually receive an extensive period of training. Includes: hourly paid supervisors who are not members of management, mechanics and repair workers, electricians and motion picture projectionists, and splicers.

Operatives (semi-skilled) -- Workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training. Includes: apprentices,¹ operatives, truck and tractor drivers, welders, installers, line workers, and trenching machine operators.

Laborers (unskilled) -- Workers in manual occupations which generally require no special training. Perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. Includes: gardeners and groundskeepers, laborers performing lifting or digging, stage hands and kindred workers.

¹ Apprentices -- Persons employed in a program including work training and related instruction to learn a trade or craft which is traditionally considered an apprenticeship regardless of whether the program is registered with a Federal or State agency.

Service Workers -- Workers in both protective and nonprotective service occupations. Includes: char workers and cleaners, elevator operators, guards and watch workers, janitors, and kindred workers.

NOTE: A person who does more than one job is to be listed in the job category which represents the most frequently performed task by that person; a person is to be listed only once in this section. Specific job titles listed in the categories above are merely illustrative. The proper categorization of any employee depends on the kind and level of the employee's responsibilities.

Minority Group Identification

(a) Minority group information necessary for this section may be obtained either by visual surveys of the workforce, or from post-employment records as to the identity of employees. An employee may be included in the minority group to which he or she appears to belong, or is regarded in the community as belonging.

(b) Since visual surveys are permitted, the fact that minority group identifications are not present on company records is not an excuse for failure to provide the data called for.

(c) Conducting a visual survey and keeping post-employment records of the race or ethnic origin of employees is legal in all jurisdictions and under all Federal and State laws. State laws prohibiting inquiries and recordkeeping as to race, etc., relate only to applicants for jobs, not to employees.

Race/Ethnic Categories

(b & g) White, not of Hispanic Origin -- A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

(c & h) Black, not of Hispanic Origin -- A person having origins in any of the black racial groups of Africa.

(d & i) Hispanic -- A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.

(e & j) Asian or Pacific Islander -- A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or in the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippines and Samoa.

(f & k) American Indian or Alaskan Native -- A person having

origins in any of the original peoples of North American, and who maintain cultural identification through tribal affiliation or community recognition.

B. & C. For employee promotion (B) and job hire (C) data, use figures for the twelve months preceding the payroll period used for the statistical profile (A). For example, if the payroll period for the statistical profile is March 1 through March 13, the employee promotion and job hire data should cover the period beginning March 14 of the prior year, through March 13 of the year of the report.

Section VI

On the attachment to the form, labor force for Section A, Line 10 (Total), will be provided by the FCC for each unit. If you supply alternative data, give the source of those data and attach as Exhibit D an explanation as to why your data is more germane than the FCC data.

Section VII

Based on the same payroll period used for Section V.A., report all permanent, not temporary, employees both full-time and part-time, in the appropriate job sub-categories, listed by gender and race, color or national origin. For promotion and job hire data, use figures for the same twelve month period used in Section V. B. and C.

Job Category Definitions

Corporate Officers -- An employee who is responsible for setting broad policies for the overall operation of the company and who holds a corporate office as designated in the company's governing regulations (e.g., Articles of Incorporation, Articles of Partnership, By-Laws). Examples of positions falling within this category may include, Chairman of the Board, President and Vice-President.

NOTE: A person whose responsibilities fall within the Corporate Officers category and one of the five succeeding job categories (i.e. Vice President and General Sales Manager) should normally be reported in one of the succeeding categories. A person should be reported in only one sub-category.

General Manager -- An employee who exercises overall responsibility for a cable unit or system. Related title may include "systems manager."

Chief Technician -- An employee who has overall responsibility for the system's technical operations. The incumbent ordinarily

oversees technical budgets and expenditures, inventory control and fleet management. Individual ordinarily supervises technical personnel in the installation, service, maintenance and construction departments and/or studio. Category includes related titles such as "Technical Operations Manager," "Technical Manager," "Plant Manager," or "Chief Engineer."

Comptroller -- An employee who manages the activities of the accounting department in the maintenance of the accounting book and other such records.

General Sales Manager -- A senior sales or marketing employee who oversees the marketing functions of the system which may include telemarketing in addition to direct sales.

Production Manager -- A senior employee responsible for advertising and/or production of local community programming.

NOTE: A person is to be listed in the one category which represents the most frequently performed task by that person. Specific job titles listed in the categories above are merely illustrative. The proper categorization of any employee depends on the kind and level of the employee's responsibilities.

Section VIII

Provide a list, by job title within each of the 15 job categories, of the employees reported in Sections V.A and VII. This list should include: the job title; the job category for each job title; the full or part-time status of each position; the gender of the employee holding the position; and the race or national origin of the employee holding the position. Job titles may be listed in any order. Job title data must be provided for all of the 15 job categories. Please list the full title of each position (e.g., Vice President and General Sales Manager).

The total number of positions reported on this list should equal the total number of employees reported in Section V.A.

Computer-generated lists may be submitted in lieu of the FCC-provided form. However, such lists must contain all of the information requested in these instructions. If you decide to submit a computer-generated list, use the FCC-provided form as a format reference.